police. The Missouri constitution provides that "no person shall be compelled to testify against himself in a criminal cause." *Held*, that the statute is constitutional. *Ex parte Kneedler*, 147 S. W. 983 (Mo., Sup. Ct.).

For a discussion of the principles involved, see 24 HARV. L. REV. 570.

BOOK REVIEWS.

SEDGWICK ON DAMAGES. Ninth Edition, Revised, Rearranged, and Enlarged by Arthur G. Sedgwick and Joseph H. Beale. In four volumes. pp. xxxii, 3400. Baker, Voorhis and Company. 1912.

The ninth edition of Sedgwick on Damages will be welcomed as the satisfaction of a long-felt desire. It would be difficult to overestimate the importance of the improvements and additions to be found in the new edition, or to overpraise the scholarly thoroughness with which the reconstruction (for such it is) of this work has been made.

The eighth edition appeared more than twenty years ago, and was itself a reconstruction of the original treatise. It is fortunate that the skill and learning of the same editors were available for the preparation of the ninth edition, which is, in our opinion, the most scientific and complete book on the subject of Damages. It is not possible within reasonable limits to specify all the improvements in this edition, but a few of them may be mentioned by way of illustration of the character of the work.

Many of the courts of this country deny the right of action for damages consequent upon fright caused by negligence when there has been no bodily impact, some apparently on the ground that if such damages are allowed the courts will be kept too busy, others on the ground that such claims are too easily feigned. In Chapter II the editors have disposed of this erroneous doctrine by pointing out its origin in a misconception of the *dictum* of Lord Wensleydale in Lynch *v.* Knight[1] and also by an admirable discussion of the fundamental mistake in the reasoning of the courts which deny the right of action in this class of cases.

Chapter VII, on Proximate and Remote Damages, clears up in a satisfactory manner the confusion and uncertainty in the use of the words "consequential," "proximate," and "remote," and makes the legal distinction between "proximate" and "remote" a practical, not a logical one.

In this chapter occurs the only instance of difference of opinion between the two editors, who state in the preface that

> "in reflecting on the extent of the field covered, it is a satisfaction to find that the most recent study of the subject by one editor is confirmed at every point but one by the conclusions of the other, while this point is one on which the courts have for fifty years been in conflict."

Mr. Sedgwick attempts to reconcile the early leading cases on the question whether negligent delay by a carrier is the legal cause of a loss consequent upon exposure to such operations of nature as are called acts of God or upon a risk excepted in the contract, and to show that the conflict on this subject in many succeeding cases is due to the mistaken idea that the decisions in the early cases were in conflict, and he declares himself in favor of the New York, and opposed to the Massachusetts, rule. Professor Beale dissents from this view "in every particular."[2] Such independence is quite refreshing, but we regret that Professor Beale did not add to the interest naturally excited by his candid statement of disagreement, by pointing out the errors of Mr. Sedgwick's view.

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[1] 9 H. L. Cas. 577, 598.

[2] P. 207, n. 28.

At the beginning of Chapter VIII, on Natural Consequences, are several new sections setting forth with delightful clearness the true meaning of the word "natural," as applied to the consequences of a defendant's act, both in relation to the cause of action and the items of damage.

In Chapter X, on Avoidable Consequences, that doctrine is placed on the true ground of the responsibility of a plaintiff for consequential results of the defendant's act, which the plaintiff could have prevented by the exercise of reasonable efforts, and not upon any duty owed by the plaintiff to the defendant.

And in Chapter XI, a new and very valuable chapter on Replacement, the fundamental error of the substitution of the conception of a duty to replace for that of a resort to the cost of replacement as a measure of damages is pointed out, and the doctrine of higher intermediate value as a measure of damages in stock-carrying contracts is explained and appropriately limited.

The subject of Liquidated Damages has been one of the most confused and difficult parts of the law of damages, because of the practice of the courts of imputing to the parties an intention contrary to the fact, and inventing numerous canons of interpretation by which to arrive at this fictitious intention. Aided by recent cases in the Supreme Court of the United States and the House of Lords, the editors have succeeded, in Chapter XIII, in greatly clarifying the subject, and making it possible to hope that the courts may dispense with the "peculiar code of hermeneutics" which has introduced so much artificiality into this part of the law.

In Chapter XXXV an attempt is made to dissipate the confusion surrounding the cases of Smith *v.* Bolles[3] and Morse *v.* Hutchins,[4] and the cases which respectively follow these authorities, by reasoning that the measure of damages depends on the question whether the action is brought for breach of warranty (whether in assumpsit or in tort) or in tort for deceit. This reasoning is satisfactory when it is clear that the action is brought for breach of warranty or for deceit, but the real difficulty occurs where, forms of action being abolished, the plaintiff in his complaint or petition only states the facts, and such statement discloses both breach of warranty and false representations. In this case the plaintiff should be entitled to recover, at his election, either the value of his bargain lost by the breach of warranty, or the amount that he is out of pocket by reason of the deceit.

The book has also great value as a cyclopedia of cases, more than sixty thousand of which are cited. An instance of its practical value is to be found in Chapter LVIII, a new chapter on Excessive or Inadequate Damages, which contains a list which will be of great service to lawyers hunting for precedents to aid them on motions to set aside, increase, or reduce verdicts for excessive or inadequate damages, more than seventeen hundred cases being cited with the amount of the verdict and a brief note of the nature of the injury. Much time and ingenuity must have been devoted to the excellent condensation of the facts in these cases.

A new chapter on Conflict of Laws, short but comprehensive, concludes the book.

Confusion and conflict still exist in some branches of the law of Damages, but in the twenty years since the last edition of this book much progress has been made toward a better understanding of the principles and toward working out more harmonious and just rules. How this has been done, not by the legislatures, but by the judges since they have been freed from the fetters of the forms of action, is made clear by the editors in the preface, more than two thirds of which is devoted to the consideration of the reasons for the defective administration of justice in this country. This part of the preface is such an acute diagnosis of the causes of the evil, and so sound in its suggestions of remedies, that it is to be regretted that it should be buried in a place where it can be read by compar-

[3] 132 U. S. 135.

[4] 102 Mass. 439.

atively few persons. It ought to be republished in another form for the widest circulation, for it contains an impressive lesson to all of us, and particularly to those who, though justly discontented with the delays and failures of justice, study not the causes of the defects of which they complain, but, rushing blindly about in search of remedies, are allured by the *ignis fatuus* of the recall of the judges, that most futile and dangerous of all proposed remedies.

The recall of the judges will remedy nothing. It will only make things worse, for it will breed a class of judges with their eyes always on the weather-vane of popular favor, and so timid and vacillating that all fair-minded critics of the judiciary will be forced to admit that causes for dissatisfaction have become far greater and more real than before. What is really needed is not less, but more, independence in the judges. Instead of hampering them with technicalities of procedure, imposed upon them by the legislatures, and limiting their powers of control over juries, and now threatening them with the recall by popular vote, they ought to be released from the strait-jackets into which they have been put by most of the legislatures, and given a freer hand in the trial of cases both as to the juries and the lawyers. And, going down deeper into the root of the matter, the editors recognize, as do most experienced and thoughtful lawyers, although there are not many who have the courage to say it openly, that the quality of the judges could best be improved by abolishing the elective system, and returning to the system of appointment which prevails in England, in the federal courts, and in a few of our older states. But this is a counsel of perfection, which it seems useless to discuss in these times of excitement and wild appeals to popular prejudice. The editors wisely advise that "it will not do to wait until we can get a perfect tenure of office, and a better system of nominations and measure of judicial compensation than now exists," but that "the abuse as it exists in practice should be struck at without delay." And the simple modern English system of procedure is held up as a model. J. D. B.

AN ANALYSIS OF SALMOND'S JURISPRUDENCE. By Reginald E. de Beer, Solicitor. London: Stevens and Haynes. 1911. pp. x, 134.

This is another of the strange type of books which the English system of examination brings forth in such profusion. Its chief aim seems to be to enable students to take an examination in a book without reading it. The teacher of that none too teachable subject, jurisprudence, might find the book useful, however, as it is a careful and well-arranged summary of what is on the whole the best book available for instruction. R. P.

FOREIGN COMPANIES AND OTHER CORPORATIONS. By E. Hilton Young. Cambridge (England) University Press. 1912. pp. xii, 332.

This thoughtful and excellent book is divided into two parts: a scholarly consideration of the Juristic Person in Private International Law, and a consideration of the English law of foreign companies. The latter is somewhat inadequate perhaps, but the chief value of the book is the clear setting forth of the principal modern theories of juristic personality, of capacity, and of the domicile of corporations. The author strives to explain all the doctrines of the continental, English, and American writers and judges on these questions. It may perhaps be objected that he seems almost unaware of certain fundamental differences which make it impossible to find a single solution for the questions. Being familiar with the English practice of incorporating public and charitable societies, while business associations are registered only and not incorporated, he seems not to realize the necessity of distinguishing, with regard